

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA.

Plaintiff,

v.

PNEUMO ABEX CORPORATION,
CITY OF PORTSMOUTH, VIRGINIA,
and PORTSMOUTH REDEVELOPMENT
AND HOUSING AUTHORITY,

Defendants.

C.A.No.: 2-96-CV-27

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA. Plaintiff. v. PNEUMO ABEX CORPORATION, CITY OF PORTSMOUTH, VIRGINIA, and PORTSMOUTH REDEVELOPMENT AND HOUSING AUTHORITY, Defendants.	C.A. No.2:96-CV-27
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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106, 107 and 113 (b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613 (b).

B. The United States in its complaint seeks: (1) reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the Abex Corporation Superfund Site (as defined below) in Portsmouth, Virginia, together with accrued interest; (2) performance of studies and response work by the Defendants at the Site in conformity with the Amended Record of Decision (as defined below), the Explanations of Significant Differences (as defined below), and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); (3) a declaration of Defendants' liability for further

response costs incurred in relation to the Site; and (4) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121 (f) (1) (F) of CERCLA, 42 U.S.C. § 9621 (f) (1) (F), EPA notified the Commonwealth of Virginia (the "Commonwealth") in January 1993 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this settlement. The Commonwealth has declined to participate.

D. In accordance with Section 122(j) (1) of CERCLA, 42 U.S.C. § 9622 (j) (1), EPA notified the Department of the Interior and the National Oceanic and Atmospheric Administration on December 7, 1992 of negotiations with potentially responsible parties ("PRPs") regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The Defendants who have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. In June of 1984, EPA contractors performed a site inspection and collected several samples from that portion of the Site owned by Abex Corporation (hereinafter "Pneumo Abex"). Sample results indicated elevated levels of a mixture of hazardous substances including lead (up to 10,400 mg/kg), zinc, copper, tin and antimony.

G. In April of 1986, EPA collected additional soil samples from certain other areas within and adjoining the 700 foot Site area. The results again indicated elevated lead levels. Pursuant to the authority granted by Section 106 of CERCLA, 42 U.S.C. § 9606, in August of

1986, EPA entered into a Consent Order with Abex Corporation (Abex became Pneumo Abex Corporation in 1988). Under the 1986 Consent Order, Abex Corporation was required to excavate and remove contaminated soil at varying depths from certain residential areas around the Site. Two lots were also paved over.

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List (NPL), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 28, 1990 (55 Fed. Reg. 35502).

I. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, Pneumo Abex performed a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP;

J. Pneumo Abex completed a final Remedial Investigation ("RI") Report and a final Feasibility Study ("FS") Report in February of 1992;

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the first proposed plan for remedial action in April, 1992 in *The Virginia-Pilot/Ledger Star*, a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the original proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action;

L. The decision by EPA on the remedial action to be implemented at the Site was embodied in a Record of Decision ("ROD") executed in September of 1992. Based upon public comments received on the September, 1992 ROD and other new information obtained by EPA, a Proposed Plan to Amend the September, 1992 ROD was released to the public on February 14, 1994. Notice of this Proposed Plan was published in *The Virginia-Pilot/Ledger-Star* on February

17, 1994. The public was invited to participate in public availability sessions and a public meeting during the 30-day public comment period on the Proposed Plan to Amend the ROD;

M. The decision by EPA on the remedial action to be implemented at the Site was embodied in a final Amended Record of Decision ("Amended ROD"), executed in August, 1994, which the Commonwealth had a reasonable opportunity to review and comment on and with which the Commonwealth has given its concurrence. The Amended ROD includes EPA's explanation for any significant differences between the Amended ROD and the original ROD, as well as a summary of responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The Amended ROD addresses Operable Unit 1. On October 5, 1995, EPA adopted an Explanation of Significant Differences ("1995 ESD"), making significant but not fundamental changes to the Amended ROD; this 1995 ESD was attached to and incorporated into the original consent decree in this matter. On August 27, 2002, EPA adopted a second Explanation of Significant Differences ("2002 ESD"), making additional significant but not fundamental changes to the Operable Unit 1 remedy selected in the Amended ROD. An Operable Unit 2 is presently planned for the Site, but is not covered by this Consent Decree.

N. Based on the information presently available to EPA, EPA believes that the Work (as defined below) will be properly and promptly conducted by the Settling Defendants;

O. The Remedial Action selected by the Amended ROD, as modified by the 1995 and 2002 Explanations of Significant Differences, and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President solely for the purposes of Section 113 (j) of CERCLA, 42 U.S.C. § 9613 (j);

P. The Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid

prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

A. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613 (b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

A. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendants' responsibilities under this Consent Decree.

B. Each Settling Defendant shall provide a copy of this Consent Decree to each contractor it hires to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Each Settling Defendant or each Settling Defendant's contractor shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Each Settling Defendant shall

nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant it contracted with within the meaning of Section 107 (b) (3) of CERCLA, 42 U.S.C. § 9607 (b) (3).

IV. DEFINITIONS

A. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.
2. "Commonwealth" shall mean the Commonwealth of Virginia.
3. "Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.
4. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
5. "Duly Authorized Representative" shall mean a person designated in accordance with the procedures set forth in 40 C.F.R. § 270.11 (b).

6. "Explanations of Significant Differences" or "ESDs" shall mean the EPA's 1995 and 2002 Explanations of Significant Differences which modify the Amended ROD and are set forth in Appendix D.

7. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or successor agencies of the United States.

8. "VDEQ" shall mean the Virginia Department of Environmental Quality and any successor departments or agencies of the Commonwealth of Virginia.

9. "Future Response Costs" shall mean all costs of removal or remedial action not inconsistent with the National Contingency Plan, including, but not limited to, indirect costs, that the United States incurs in overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VI.F (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (EPA Periodic Review), X (Access) (including, but not limited to, attorneys fees and the amount of any just compensation), Section XVI.A (Emergency Response), and the costs of reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. Future Response Costs shall also include all costs of removal or remedial action not inconsistent with the National Contingency Plan, including indirect costs, incurred by the United States in connection with the Site between (and including) December 24, 1994 and April 25, 1996 and costs incurred prior to December 24, 1994 that were not accounted for in EPA's Financial Management System by the time that the March 30, 1995 Cost Summary Report was prepared, and all interest on those costs, and all interest on the Past Response Costs from December 24, 1994 to the date of payment of such Past Response Costs. This definition of future response costs shall not include costs for any response action or Operable Unit not addressed by this Consent Decree.

10. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

11. "Operable Unit 1" ("OU 1") shall mean that portion of Site remediation work specified in the Amended Record of Decision issued pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604 and defined in 40 C.F.R. § 300.5, as amended by the ESDs.

12. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

13. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

14. "Parties" shall mean the United States and the Settling Defendants.

15. "Past Response Costs" shall mean all costs of removal or remedial action not inconsistent with the National Contingency Plan, including, but not limited to, indirect costs, that the United States incurred with regard to the Site prior to December 24, 1994 with the exception of costs not accounted for in EPA's Financial Management System at the time that the March 30, 1995 Cost Summary Report was prepared, and all interest on such costs accrued prior to that date.

16. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations that are used to determine whether the objectives of the Amended ROD as modified by the ESDs and this Consent Decree are being achieved. Performance Standards include those set forth on pages 52-57 of the Amended ROD, attached hereto as Appendix A, as modified by the ESDs, attached hereto as

Appendix D, and those that are developed by the Settling Defendants and approved by EPA during the Remedial Design.

17. "Plaintiff" shall mean the United States.

18. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

19. "Amended Record of Decision" or "Amended ROD" shall mean the EPA Record of Decision relating to the Operable Unit 1 at the Abex Site set forth in Appendix A hereto and signed in August 1994, by the Regional Administrator, EPA Region III.

20. "Remedial Action" shall mean all activities, as defined by Section 101 (24) of CERCLA, 42 U.S.C. § 9601 (24), except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Defendants to implement both the Amended ROD, as modified by the ESDs, and the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

21. "Remedial Action Work Plan" shall mean a plan for Remedial Action, including a schedule for implementation of Remedial Action, submitted by Settling Defendant Pneumo Abex and approved by EPA pursuant to Section VI.B of this Consent Decree.

22. "Remedial Design" shall mean those activities to be undertaken by the Settling Defendant Pneumo Abex pursuant to the Remedial Design Work Plan to develop the final plans and specifications for the Remedial Action as specified in the Amended ROD.

23. "Remedial Design Work Plan" shall mean a plan for Remedial Design, including a schedule for remedial design work, submitted by Settling Defendant Pneumo Abex and approved by EPA pursuant to Section VI.B of this Consent Decree.

24. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

25. "Settling Defendants" shall mean those parties listed in Appendix C.

26. For the purposes of this Consent Decree, "Site" shall mean the area to be addressed by Operable Unit 1 as set forth in the Amended ROD as modified by the ESDs. It encompasses approximately 35 acres (several city blocks), located in Portsmouth, Virginia. The Site is located within a seven hundred foot radius around the former Abex foundry (currently the Holland Property) and the former Abex waste sand disposal areas (currently the Abex and McCready Lots). Both properties are bounded by Seventh, Randolph, and Green Streets. Other properties located within the Site include: the Washington Park housing development, the Effingham playground, several homes located on Seventh Street, approximately 20 homes located south of the Effingham playground, a drug rehabilitation center and a small shopping area, and several vacant lots east of the Holland property. The Site is depicted more particularly on the map attached as Appendix B.

27. "Supervising Contractor" shall mean the contractor retained by Settling Defendant Pneumo Abex to carry out the Work under this Consent Decree and accepted by EPA pursuant to Section VI.

28. "United States" shall mean the United States of America.

29. "Waste Material" shall mean (1) any "hazardous substance" under Section 101 (14) of CERCLA, 42 U.S.C. § 9601 (14) and (2) any pollutant or contaminant under Section 101 (33) of CERCLA, 42 U.S.C. § 9601 (33).

30. "Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section VI.A.1. and 2. (Performance of the Work by Settling Defendants) and Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

A. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment from releases or threatened releases of Waste Material from the Site by the design and implementation of Operable Unit 1, Remedial Action and Operation & Maintenance at the Site by the Settling Defendants and to reimburse response costs of the Plaintiff.

B. Commitments by Settling Defendants

1. Settling Defendant Pneumo Abex shall finance and perform the Work in accordance with CERCLA, the NCP and this Consent Decree, including, but not limited to, pages 52-57 of the Amended ROD (Appendix A), as modified by the ESDs,¹ (Appendix D) and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. Settling Defendant Pneumo Abex shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

2. Pneumo Abex is obligated to finance and perform the Work and to pay amounts owed the United States under this Consent Decree. Should either the City of Portsmouth or the Portsmouth Redevelopment and Housing Authority ("PRHA") fail to perform the tasks set forth in Section VI.A.1. a. – d. and 2. a – d. of this Consent Decree, by the relevant dates Pneumo Abex shall be required to perform the contingent remedy described on p. 3 in the Amended ROD, as modified by the ESDs. (See also Section VI.A.3.) Should the City of Portsmouth fail to perform the tasks set forth in Section VI.A.1. e., Settling Defendant Pneumo Abex shall be required to perform the contingency provisions of the 1995 ESD.

¹ The 1995 ESD revises the remedy set forth in the Amended ROD based on the City's timely completion of the task described in Section VI.A.1.e. The 2002 ESD revises the remedy set forth in the Amended ROD based on changes in the expected land use for a portion of the Site.

3. In the event that any of the Settling Defendants file for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Defendant shall notify the United States in writing within three (3) days of such filing.

C. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the Amended ROD (Appendix A) as modified by the ESDs (Appendix D). The United States has determined that the activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

D. Permits

1. As provided in Section 121 (e) of CERCLA, 42 U.S.C. § 9621 (e), and 40 C.F.R. § 300.400 (e), no permits shall be required for any portion of the Work conducted entirely on-Site. However, Settling Defendant Pneumo Abex shall ensure that all portions of the Work on the Site shall meet the substantive requirements of any applicable or relevant and appropriate requirement subject to EPA's right of review and approval. Where any portion of the off-site Work requires a federal, state or local permit or approval, Settling Defendant Pneumo Abex shall timely submit complete applications and take all other actions necessary to obtain all such permits or approvals.

2. Settling Defendant Pneumo Abex may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work, provided it has submitted all required information in a timely manner.

3. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal, state or local statute, regulation or ordinance.

E. Notice of Obligations to Successors-in-Title

1. Within 15 days after the entry of this Consent Decree, the Settling Defendants shall record a certified copy of this Consent Decree with the Recorder's Office or Registry of Deeds or other appropriate office in Portsmouth, Commonwealth of Virginia. Thereafter, each deed, title, or other instrument of conveyance for property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien held by the United States pursuant to Section 107 (1) of CERCLA, 42 U.S.C. § 9607 (1) and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

2. The obligations of each Settling Defendant with respect to the provision of access under Section X (Access) and the implementation of institutional controls pursuant to pages 52-53 of the Amended ROD (Appendix A) as modified by the ESDs (Appendix D) shall be binding upon any and all such Settling Defendants and any and all persons who subsequently acquire any such interest (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, each Settling Defendant shall record at the Recorder's Office (or Registry of Deeds, or other appropriate office where land ownership and transfer records are maintained for the property) a notice of obligation to provide access under Section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

3. Any Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee

and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of this Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree including their obligations to provide or secure access pursuant to Section X, shall continue to be met by the Settling Defendants. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of Settling Defendants to comply with this Consent Decree.

F. Relationship Between Consent Order and Consent Decree

The United States and Settling Defendants have agreed that certain obligations under this Consent Decree shall commence at the Site in accordance with Administrative Order on Consent, EPA Docket No. III-96-12-DC, ("Consent Order") prior to the effective date of this Consent Decree. On April 25, 1996, and as set forth in Section III of the Consent Order, the Consent Order shall terminate. It is agreed to by the Parties, that upon termination of the Consent Order, performance of Work and the tasks to be performed pursuant to Section VI.A commenced under the Consent Order shall continue under this Consent Decree in accordance with the EPA-approved schedules and requirements developed under the Consent Order. Moreover, to the extent that Work that is required both under the Consent Order and the Consent Decree is commenced or performed under the Consent Order and in accordance with the schedules approved thereunder, Settling Defendants shall not be found to be in violation of this Consent Decree and shall not be subject to stipulated penalties for failure to commence or perform Work under the schedules set forth in this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

A. Allocation of Work to Be Performed

Pneumo Abex shall perform all Work required under Section VI (Performance of the Work by Settling Defendants) of the Consent Decree. Pneumo Abex shall be under no obligation to perform the tasks identified in Paragraphs A.1 and A.2 of this Section, which the City of Portsmouth or the Portsmouth Redevelopment and Housing Authority shall use their best efforts to perform.

1. The City of Portsmouth shall use its best efforts to perform the following tasks:

(a) Upon receipt of written approval of EPA, adopt and implement institutional controls described in the Amended ROD (Appendix A) as modified by the ESDs (Appendix D), except for the placement of warning sheets;

(b) Provide in-kind services to aid remediation efforts by Pneumo Abex's contractors/subcontractors, including but not limited to, the use of any reasonably available City-owned construction equipment and City personnel, street sweeping services and water and traffic control services;

(c) Rezone the two square block area bounded by Effingham, Lincoln, Green and Brighton Streets (if Brighton were to be extended between Effingham and Green Streets) ("Effingham two square block area") from residential to commercial or light industrial;

(d) Assist Pneumo Abex's contractors/subcontractors in obtaining the requisite permits, license, and government cooperation required to perform the remedy set forth in the Amended ROD (Appendix A) as modified by the ESDs (Appendix D); and

(e) Construct a permanent City facility, within the meaning of the term as used in the 1995 ESD², within the Effingham two square block area within three years of the date the PRHA purchases or condemns all residences located within the Effingham two square block area as described in Section VI.A.2.c..

2. The Portsmouth Redevelopment and Housing Authority shall use its best efforts to perform the following tasks:

(a) Provide in-kind services to aid remediation efforts by Pneumo Abex's contractors/subcontractors, including but not limited to, the use of any reasonably available PRHA-owned construction equipment and PRHA personnel, street sweeping services and water and traffic control services;

(b) Assist Pneumo Abex's contractors/subcontractors in obtaining permits, licenses, and government cooperation required to perform the remedy set forth in the Amended ROD;

(c) Purchase and/or acquire by condemnation the residences located within the Effingham two square block area within eighteen (18) months of April 25, 1996;

(d) Purchase and/or acquire by condemnation the residences known as the Seventh Street row homes (See Appendix B) within eighteen (18) months of April 25, 1996; and

3. Notwithstanding the above, if the City or PRHA fails to perform the tasks described in paragraphs A.1.a-d and A.2.a-d, above, by the times specifically approved by EPA in the Remedial Design Work Plan, Pneumo Abex shall be required to implement the contingency provisions of the Amended ROD (as set forth on page 3 of the Amended ROD), as

² A "permanent City facility" will be defined in the 1995 ESD as a non-residential building, including necessary parking areas, owned, operated and maintained by the City to house a significant municipal function, e.g., a firehouse or a police station. A permanent recreational facility constructed within the Effingham two square block area and owned, operated and maintained by the City can be considered a part of the permanent City facility upon written approval by EPA.

modified by the ESDs and perform all Work required under Section VI of this Consent Decree. If the City fails to perform the tasks described in paragraph A.1.e., above, within three years of the date the PRHA purchases or condemns all residences located within the Effingham two square block area, Pneumo Abex shall be required to implement the contingency provisions of the 1995 ESD.

4. Settling Defendants may submit a plan to implement the temporary relocation provisions as set forth in the Amended ROD, which may include the use of available lead-abated public housing units for temporary relocation of residents impacted by implementation of the Amended ROD. This plan shall be submitted as part of the Remedial Design Work Plan. A determination by EPA to offer temporary relocation to residents not offered temporary relocation by Pneumo Abex shall be in EPA's sole discretion and not subject to judicial review. Any costs incurred by EPA in providing temporary relocation to residents during implementation of the Amended ROD shall be considered future response costs and reimbursed in accordance with provisions of Section XVII.B-E (Reimbursement of Response Costs). In addition to the provisions in Section XVII.C. for contesting future response costs, Settling Defendant Pneumo Abex may contest any temporary relocation costs it contends are inconsistent with the Amended ROD.

B. Selection of Contractors

1. All aspects of the Work to be performed by Settling Defendant Pneumo Abex pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Additional Response Actions), IX (Quality Assurance, Sampling and Data Analysis) and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA after a reasonable opportunity for review and comment by the Commonwealth. Within 10 days of

January 4, 1996, Settling Defendant Pneumo Abex shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. If at any time after acceptance by EPA of the Supervising Contractor, Settling Defendant Pneumo Abex proposes to change a Supervising Contractor, Settling Defendant Pneumo Abex shall give such notice to EPA and shall obtain acceptance from EPA, after a reasonable opportunity for review and comment by the Commonwealth, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

2. EPA will notify Settling Defendant Pneumo Abex in writing of its acceptance or disapproval of a proposed Supervising Contractor. If EPA disapproves of the selection of any contractor as Supervising Contractor, Settling Defendant Pneumo Abex shall submit to EPA the names of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously selected. EPA will provide written notice of the names of the contractor(s) that it accepts. Settling Defendant Pneumo Abex may select any accepted contractor from that list and shall notify EPA of the name of the contractor selected within 21 days of EPA's designation of accepted contractors.

3. After the Remedial Design Work Plan or Remedial Action Work Plan is approved and prior to commencement of any Work thereunder, Settling Defendant Pneumo Abex shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors, including the name(s) and qualifications of the individual(s) or entities responsible for completion of Remedial Design submittal (the "Remedial Design Professional"). Settling Defendant Pneumo Abex shall notify EPA of the date the contract is entered into with the Remedial Design Professional. The Remedial Design Professional shall provide a Professional Engineer to be present at the Site during construction to ensure that the Work is

performed in accordance with the approved Remedial Design submittal(s). EPA retains the right to disapprove any additional contractors and subcontractors selected to perform the Work. Within 14 days of receipt by EPA of the names of the additional contractors or subcontractors, EPA will notify Settling Defendant Pneumo Abex of its acceptance or disapproval of the selected additional contractors or subcontractors. If EPA disapproves any additional contractor or subcontractor, Settling Defendant Pneumo Abex may submit further information to EPA giving reasons why the additional contractor or subcontractor should be accepted. Within 14 days of the receipt of the notice of disapproval, Settling Defendant Pneumo Abex shall notify the United States of the name and qualifications of a replacement additional contractor or subcontractor. If at any time during the pendency of this Consent Decree a decision is made by Settling Defendant Pneumo Abex to retain a substitute additional contractor or subcontractor, selection of the substitute shall be governed by the provisions of this Paragraph. If EPA fails to provide notice of its acceptance or disapproval of any additional contractor or subcontractor as provided in this Paragraph and this failure prevents Settling Defendant Pneumo Abex from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Defendant Pneumo Abex may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree.

C. Remedial Design/Remedial Action

1. Within 60 days of January 4, 1996, Settling Defendant Pneumo Abex shall submit to EPA for approval a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan") and shall submit the Quality Assurance Project Plan (QAPjP, as described in Section IX), prepared in accordance with Section IX. The Remedial Design Work Plan shall provide for the design of the remedy as set forth in pages 52-57 of the Amended ROD, Appendix A, as modified by the ESDs, Appendix D, and, upon its approval by EPA, shall be

enforceable under this Consent Decree. Within 60 days of January 4, 1996, Settling Defendant Pneumo Abex shall submit to EPA a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

2. The Remedial Design Work Plan shall include but not be limited to: (1) a Sampling and Analysis Plan (SAP), prepared in accordance with Section IX, (2) a Remedial Design Permitting Requirements Plan, (3) a Remedial Design Contingency Plan, (4) work plans and schedules for the design and implementation of treatability studies, and (5) plans and schedules for the preparation and submission of preliminary, pre-final and final design submittals. Each of these plans shall include schedules and methodologies for implementation of all necessary remedial design and pre-design tasks. The treatability study work plans shall include Treatability Study Construction Quality Assurance Project Plans applicable to necessary construction. In addition, the Remedial Design Work Plan shall include an expeditious schedule for completion of all components of the Remedial Design.

3. Upon approval of the Remedial Design Work Plan, Settling Defendant Pneumo Abex shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. Settling Defendant Pneumo Abex shall submit all plans, submittals, and other deliverables required pursuant to this Consent Decree in accordance with the approved schedule herein for review and approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and Comment). Unless otherwise directed by EPA, the Settling Defendants shall not commence activities at the Site prior to approval of the Remedial Design Work Plan.

4. The preliminary design submittal required under Paragraph C.2, above, shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies;

(3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

5. The pre-final and final design submittal required under Paragraph C.2, above, shall each include, at a minimum, the following plans, as well as expeditious schedules and specific methodologies for implementation of these plans; (1) final designs and specifications for the Remedial Action; (2) Operation and Maintenance Plan; (3) a Remedial Action Construction Plan; (4) a Remedial Action Construction Quality Assurance Plan (CQAP); (5) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); (6) a Groundwater Monitoring Plan consistent with the Amended ROD; (7) complete specifications for preparation of a Health and Safety Plan for field activities required by the pre-final/final design; (8) complete specifications for preparation of procedures and plans for the decontamination of equipment and disposal of contaminated materials (the "Decontamination Plan"); (9) a Remedial Action Permitting Requirements Plan; and (10) a Remedial Action Contingency Plan. Settling Defendant Pneumo Abex shall ensure that specifications required under item 7, above, as accepted by EPA and under item 8, above, as approved by EPA, are met by Settling Defendant Pneumo Abex's contractor(s) in preparing the Health and Safety Plan and the Decontamination Plan. The Decontamination Plan shall be submitted by Settling Defendant Pneumo Abex for approval, and the Health and Safety Plan for field activities for acceptance, in accordance with the schedule set forth in the final design submittal, and upon approval of the Decontamination Plan and acceptance of such Health and Safety Plan, such plans shall be incorporated in, and enforceable as part of, the Remedial Action Work Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify an Independent Quality Assurance Team (IQAT) to conduct a quality assurance program

during the construction phase of the project. The IQAT shall be responsible for examining and testing various materials, procedures and equipment during implementation of the construction activities. The IQAT shall perform on-Site inspections of the Work to assess compliance with project standards, verify that the construction quality assurance plan is implemented, and report to the Settling Defendants and EPA the results of all inspections.

6. Upon approval, approval upon conditions, or modification by EPA, as provided in Paragraphs B and D of Section XII below, of all components of the final design submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be enforceable under this Consent Decree. Settling Defendant Pneumo Abex shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

7. Settling Defendant Pneumo Abex shall submit all plans, submittals, and other deliverables required under the Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and Comment). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, Settling Defendant Pneumo Abex shall not commence physical on-Site activities at the Site prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

D. The Work performed by Settling Defendant Pneumo Abex pursuant to this Consent Decree shall, at a minimum, achieve the Performance Standards.

E. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the Description of Selected Remedy and Performance Standards set forth on pages 52-57 of the Amended ROD, (Appendix A), as modified by the ESDs (Appendix D), or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff

that compliance with the work requirements in the Description of Selected Remedy and Performance Standards set forth on pages 52-57 of the Amended ROD (Appendix A), as modified by the ESDs (Appendix D), the Remedial Design, and the Remedial Action Work Plans will achieve the Performance Standards as set forth in Appendix A. Such compliance shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

F. Settling Defendant Pneumo Abex shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipment when the total volume of all shipments will not exceed 10 cubic yards.

1. Settling Defendant Pneumo Abex shall include in the written notification the following information, where available: (a) the name and location of the facility to which the Waste Materials are to be shipped; (b) the type and quantity of the Waste Materials to be shipped; (c) the expected schedule for the shipment of the Waste Materials; and (d) the method of transportation. Settling Defendant Pneumo Abex shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Materials to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by Settling Defendant Pneumo Abex following the award of the contract for Remedial Action construction. Settling Defendant Pneumo Abex shall provide the written notification required by this Section VI.F, including the information required by Paragraph F.1 as soon as practicable

after the award of the contract, but in no case less than 14 days before the Waste Materials are actually shipped.

G. In the event EPA determines that Settling Defendant Pneumo Abex has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant Pneumo Abex may dispute EPA's determination that it failed to implement a provision of the Work in an adequate or timely manner only by invoking the procedures set forth in Section XX (Dispute Resolution). Such dispute shall be resolved on the administrative record pursuant to Section XX.D. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs for the purposes of Section XVII (Reimbursement of Response Costs).

VII. ADDITIONAL RESPONSE ACTIONS

A. In the event that EPA determines or Settling Defendant Pneumo Abex proposes that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected for OU1 in the Amended ROD (Appendix A), as modified by the ESDs (Appendix D), notification of such additional response actions shall be provided by EPA to the Settling Defendant Pneumo Abex's Project Coordinator or by Settling Defendant Pneumo Abex to the EPA Remedial Project Manager.

B. Within 30 days (or such longer time as may be specified by EPA) of receipt of notice from EPA pursuant to Paragraph A of this Section VII that additional response actions are necessary, Settling Defendant Pneumo Abex shall submit for approval by EPA, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Section VI (Performance of the Work by Settling Defendants). Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and

Comment), Settling Defendant Pneumo Abex shall implement the plan for additional response actions in accordance with the schedule contained therein.

C. Any additional response actions that Settling Defendant Pneumo Abex proposes are necessary to meet the Performance Standards or to carry out the remedy selected for OU1 in the Amended ROD (Appendix A), as modified by the ESDs (Appendix D), shall be subject to approval by EPA, and, if authorized by EPA, shall be completed by Settling Defendant Pneumo Abex in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and Comment).

D. If required by Sections 113 (k) (2) or 117 of CERCLA, 42 U.S.C. §§ 9613 (k) (2) or 9617, or the NCP, Settling Defendants and the public will be provided with an opportunity to comment on any additional response actions proposed pursuant to this Section VII.B or C and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, or his/her delegate will determine in writing whether additional response actions are appropriate.

E. Settling Defendant Pneumo Abex may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the Amended ROD (Appendix A), as modified by the ESDs (Appendix D). Such a dispute shall be resolved pursuant to Section XX.B through D of this Consent Decree.

VIII. U.S. EPA PERIODIC REVIEW

A. Settling Defendant Pneumo Abex shall conduct any studies and investigations requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121 (c) of CERCLA, 42 U.S.C. § 9621 (c), and any applicable regulations.

B. If required by Sections 113 (k) (2) or 117 of CERCLA, 42 U.S.C. §§ 9613 (k) (2) or 9617, or the NCP, Settling Defendants and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121 (c) of CERCLA, 42 U.S.C. § 9621 (c), and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, or his/her delegate will determine in writing whether further response actions are appropriate.

C. If the Regional Administrator, EPA Region III, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121 (c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, Settling Defendant Pneumo Abex shall undertake any further response actions EPA has determined are appropriate. However, Settling Defendant Pneumo Abex may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment or (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with the law. Such a dispute shall be resolved pursuant to Section XX.B through D of this Consent Decree.

D. Within 60 days after notice of EPA's determination that further response actions are necessary or resolution of any dispute pursuant to Paragraph C of this Section VIII, whichever is later, Settling Defendant Pneumo Abex shall submit plans for design and implementation of any further response actions they are required to perform in accordance with the applicable procedures set forth in Sections VI (Performance of the Work by Settling Defendants) and XII (Submissions Requiring Agency Approval; Commonwealth Review and

Comment) and, upon approval of such plans by EPA, shall complete the further response action in accordance with such plans and any schedules contained therein.

IX. QUALITY ASSURANCE

A. While conducting all sample collection and analysis activities required by this Consent Decree, Settling Defendant Pneumo Abex shall implement quality assurance, quality control and chain of custody procedures in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA", 1988 (OSWER Directive 9355.3-01); "EPA NEIC Policies and Procedures Manual", May 1978, revised May 1986 (EPA 330/978-001-R); "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans", December 1980 (QAMS 005/80); "A Compendium of Superfund Field Operations Methods", December 1987 (OSWER Directive 9355-0-14) "Data Quality Objectives for Remedial Response Activities", March 1987 (OSWER Directive 9355.0-7B); and amendments to these guidelines.

B. Settling Defendant Pneumo Abex shall consult with EPA in planning for, and prior to, all sampling and analysis required by this Consent Decree, and any subsequent EPA-approved plans prepared as part of this Consent Decree. Further, Settling Defendant Pneumo Abex shall not commence sampling until EPA approves the Remedial Design Work Plan and the Sampling and Analysis Plan (SAP).

C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Decree, Settling Defendant Pneumo Abex shall:

1. Submit to the EPA Remedial Project Manager the selected laboratory's(ies') Quality Assurance Program Plan (QAPP) and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation (PE) results, equipment

lists and personnel resumes. The SAP must state that all protocols described therein take precedence over protocols listed in the Laboratory QAPP.

2. Ensure that EPA personnel and/or its authorized representatives are allowed reasonable access to the laboratory(ies), records and personnel utilized by the Settling Defendant Pneumo Abex in implementing this Consent Decree.

3. Prepare a SAP, consisting of a Quality Assurance Project Plan (QAPjP) and a Field Sampling Plan (FSP), for sample collection, transportation, analysis, validation and reporting to be conducted pursuant to this Consent Decree. The SAP shall be submitted as part of the Remedial Design Work Plan to the EPA Remedial Project Manager for review and approval prior to commencing sampling and analysis. Each plan shall specify, for the phase of activity addressed, the data quality objectives (DQOs), sample collection and transportation procedures, data analysis methods, data reduction, data review, and reporting procedures. Selection of analytical methods shall be justified in conjunction with the DQOs. The guidelines referenced in Paragraph (A), above, shall be followed in the preparation of the SAP; additional guidance may be provided by EPA when applicable and/or requested by Settling Defendant Pneumo Abex.

4. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree uses appropriate methods. If EPA Contract Lab Program (CLP) methods are selected, the laboratory(ies) shall use these and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." If non-CLP methods are selected, all constituents and physical parameters shall be analyzed using methods that are specified (method and reference) and justified in the SAP. Non-CLP methods shall be fully described in the QAPjP and approved by the EPA Remedial Project Manager prior to conducting any sampling and analysis. This

description shall include, at a minimum, the matrix, calibration, Quality Control (QC) samples (type and frequency), corrective measures, and deliverables.

5. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree agrees to demonstrate its capability to perform the selected analyses by analyzing PE samples, supplied by EPA. Analysis of PE samples may be waived by EPA if the laboratory(ies) satisfactorily analyzed PE samples using the selected methods within the six months prior to analysis conducted pursuant to this Consent Decree. Documentation of such PE sample analysis shall be submitted to the EPA Remedial Project Manager for verification.

6. At the request of EPA, conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the SAP. Auditors shall conduct lab audits at sometime during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the EPA Environmental Services Division Quality Assurance Branch (QA Branch). Audit reports shall be submitted to the EPA Remedial Project Manager within fifteen days of completion of the audit. Settling Defendant Pneumo Abex shall report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four hours of the time it knows or should have known of the deficiency.

7. Conduct at least one field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the SAP. A report of the field audit shall be submitted to the EPA Remedial Project Manager within fifteen days of completion of the audit. Settling Defendant Pneumo Abex shall report the scope of the audit and the deficiencies noted, and take action to correct such deficiencies within twenty-four hours of the time Settling Defendant Pneumo Abex

knows or should have known of the deficiency. EPA shall have the option to audit any stage of the field activities.

8. Provide data validation of analyses completed by the laboratory(ies), to determine data usability. If the data is derived by CLP methods, the data validation shall be performed in accordance with the most recent National Functional Guidelines for Data Review and Region III Modifications (available from the QA Branch). For non-CLP methods, the data validation shall be performed as described in the SAP and in accordance with the QC data validation criteria set forth in that method. The quality assurance data validation reports shall be prepared using EPA Region III format (available from the QA Branch) and shall be submitted, along with the validated data summary sheets and the laboratory sample results, to the EPA Remedial Project Manager.

D. At the request of EPA, Settling Defendant Pneumo Abex shall allow split or duplicate samples to be taken by EPA, and/or its authorized representatives, of any samples collected by Settling Defendant Pneumo Abex pursuant to this Consent Decree. Settling Defendant Pneumo Abex shall notify EPA not less than 30 days in advance of any such sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems appropriate. At the request of Settling Defendant Pneumo Abex, EPA shall allow split and/or duplicate samples to be taken by Settling Defendant Pneumo Abex and/or its authorized representatives of any sample collected by EPA pursuant to this Consent Decree.

E. Within seven days of a request by EPA, Settling Defendant Pneumo Abex shall submit to EPA three copies of the results of any sampling and/or test or other data obtained or generated by or on behalf of Settling Defendant Pneumo Abex pursuant to this Consent Decree and requested by EPA.

F. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statute or regulation.

X. ACCESS

A. Commencing on January 4, 1996, and to the extent the property is owned or access to the property is controlled by Settling Defendants, the Settling Defendants agree that the United States, and its representatives, including EPA and its contractors, shall have access at all times to the Site and any other property to which access is required for the implementation of this Consent Decree, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

1. Monitoring the Work;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents consistent with Section XXV (Access to Information); and
7. Assessing Settling Defendants' compliance with this Consent Decree.

B. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for themselves, as well as for the United States and its representatives, including, but not limited to,

EPA and its contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access to property of owners who have not been identified as PRPs and who are not liable. If any access, except for the homes to be purchased and/or condemned by PRHA pursuant to Section VI. A.2.c. and d. of this Consent Decree, required to complete the Work is not obtained within 45 days of January 4, 1996, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. Access to property to be purchased and/or condemned by PRHA must be obtained within eighteen (18) months of April 25, 1996. The United States may, in its unreviewable discretion, assist Settling Defendants in obtaining access. Settling Defendant Pneumo Abex shall reimburse the United States, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

C. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERLCA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, Settling Defendant Pneumo Abex shall submit to EPA and the Commonwealth five copies each of a written monthly progress report that: (1) describes the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) includes all results of sampling and tests and all other data received or generated by Settling Defendant Pneumo Abex or its contractors or agents in the previous month; (3) identifies all work plans, plans and other

deliverables required by this Consent Decree completed and submitted during the previous month; (4) describes all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (5) includes information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (6) includes any modifications to the work plans or other schedules that Settling Defendant Pneumo Abex has proposed to EPA or that have been approved by EPA; and (7) describes all activities, as approved by EPA under Section XXXI (Community Relations) undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendant Pneumo Abex shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following January 4, 1996 until EPA notifies the Settling Defendants pursuant to Paragraph B (2) of Section XV (Final Inspection). If requested by EPA, Settling Defendants Pneumo Abex shall also provide briefings for EPA to discuss the progress of the Work.

B. Settling Defendant Pneumo Abex shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven days prior to the original date for performance of the activity. Notwithstanding the foregoing, Settling Defendant Pneumo Abex shall notify EPA of any change in the schedule described in the monthly progress report for the performance of data collection no later than thirty days prior to the performance of such activity.

C. In addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42

U.S.C. § 11004, upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA, 42 U.S.C. § 11004, Settling Defendant Pneumo Abex shall, within 24 hours of when it knew or should have known of the onset of such event, orally notify the EPA Remedial Project Manager or the Chief of the General Remedial Section (in the event of the unavailability of the EPA Remedial Project Manager), or, in the event that neither the EPA Remedial Project Manager or Section Chief is available, the EPA Region III Hotline at (215) 814-9016. Within 20 days of the onset of such an event, Settling Defendant Pneumo Abex shall furnish to EPA and the Commonwealth a written report, signed by Settling Defendant Pneumo Abex's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant Pneumo Abex shall submit a report setting forth all actions taken in response thereto.

D. Except as otherwise provided in this Consent Decree, Settling Defendant Pneumo Abex shall submit six copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant Pneumo Abex shall simultaneously submit six copies of all such plans, reports and data to the Commonwealth.

E. Plans, design documents, proposals, reports or other documents prepared or authorized to be prepared by a Settling Defendant shall be signed by a Duly Authorized Representative of that Settling Defendants certifying the information as follows:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false

information, including the possibility of fine and imprisonment for knowing violations.”

The Remedial Design Work Plan, Remedial Action Work Plan and any other work plan approved by EPA pursuant to this Consent Decree shall specify which documents shall be so certified.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL; COMMONWEALTH REVIEW AND COMMENT

A. Any plan, report, or other item which is required to be submitted for approval by EPA pursuant to this Consent Decree shall be submitted to the Commonwealth at the same time it is submitted to EPA. After review of any such plan, report or other item, EPA shall, after reasonable opportunity for review and comment by the Commonwealth: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) modify the submission to cure the deficiencies; (4) direct that the Settling Defendant who submitted the submission modify the submission; (5) disapprove, in whole or in part, the submission, notifying the Settling Defendant who submitted the submission of deficiencies; or (6) any combination of the above.

B. In the event of approval, approval upon conditions, or modification by EPA, the Settling Defendant who submitted the submission shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA.

C. Upon receipt of a notice of disapproval or a notice requiring a modification, such Settling Defendant shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or a notice requiring a modification, the Settling

Defendant who submitted the submission shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

D. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require that the Settling Defendant correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Subject only to its right to invoke procedures set forth in Section XX (Dispute Resolution), the Settling Defendant who submitted the submission shall implement any such plan, report, or item as amended or developed by EPA. Implementation of any non-deficient portion of a submission shall not relieve the Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties) for any violations of this Consent Decree relating to any deficient portion of the submission.

E. If a plan, report, or item is disapproved by EPA because it is deemed substantially deficient by EPA, the Settling Defendant who submitted the submission shall be deemed to be in violation of the provision of this Consent Decree requiring that Settling Defendant to submit such plan, report, or item unless the Settling Defendants invoke dispute resolution and this Court overturns EPA's disapproval. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution.

F. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon modification and/or approval by EPA, be enforceable under this Consent Decree. In the event that EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER

A. EPA has selected a Remedial Project Manager for this Site. The EPA Remedial Project Manager is the EPA representative to whom notices and other submissions are to be submitted pursuant to Section XXVII (Notices and Submission) of this Consent Decree. Within 20 days of January 4, 1996, Settling Defendant Pneumo Abex will notify the other Settling Defendants and the EPA Remedial Project Manager, in writing, of the name, address and telephone number of its designated Project Coordinator. EPA shall have the right to change its Remedial Project Manager and Settling Defendant Pneumo Abex shall have the right to change its Project Coordinator. Any such change shall be accomplished by notifying the other party, in writing, at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant Pneumo Abex's Project Coordinator shall be subject to acceptance by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendant Pneumo Abex's Project Coordinator shall not be acting as an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

B. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The EPA Remedial Project Manager shall have the authority lawfully vested in a Remedial Project Manager by the NCP. In addition, the EPA Remedial Project Manager shall have authority, consistent with the NCP, to halt or redirect any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site may constitute an emergency situation or may present an

immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

C. EPA's Remedial Project Manager and Settling Defendant Pneumo Abex's Project Coordinator will confer or meet, at a minimum, on a monthly basis.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

A. Within 30 days of January 4, 1996, Settling Defendant Pneumo Abex shall establish and maintain financial security in the amount of \$20,000,000 (the approximate current estimated cost of the remedy) in the form of a Letter of Credit. On April 25, 1997, Pneumo Abex shall establish and maintain a second Letter of Credit in the amount of \$20,000,000. On the second anniversary thereafter, Pneumo Abex shall revise the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Pneumo Abex shall submit its estimated cost of the remaining work to be performed to EPA 60 days prior to April 25, 1998 and 60 days prior to April 25 of every calendar year thereafter. Upon approval by EPA, Pneumo Abex shall establish and maintain the current estimated cost of the remedy in one of the following forms:

- (1) A surety bond guaranteeing performance of the Work;
- (2) One or more letters of credit;
- (3) A trust fund;
- (4) A corporate guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with Settling Defendant Pneumo Abex; or
- (5) A demonstration that Settling Defendant Pneumo Abex satisfies the requirements of 40 C.F.R. § 264.143 (f) (April 7, 1982, as amended May 2, 1986).

Such financial security shall be maintained by Settling Defendant Pneumo Abex until EPA agrees that the Work has been completed and issues Concurrence Notice No. 2 in accordance with Section XV.

B. If Settling Defendant Pneumo Abex seeks to demonstrate its ability to complete the Work through a corporate guarantee by a third party pursuant to Paragraph A (4) of this Section XIV, Settling Defendant Pneumo Abex shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143 (f). If Settling Defendant Pneumo Abex seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee, it shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143 (f) annually, on April 25 of every calendar year.

C. In the event of a dispute with respect to the estimated cost of the remaining Work to be performed, Settling Defendant Pneumo Abex shall maintain an amount of security in accordance with the final administrative or judicial decision resolving the dispute.

D. In the event that EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, Settling Defendant Pneumo Abex shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph A of this Section XIV. Settling Defendant Pneumo Abex's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. FINAL INSPECTION

A. Completion of the Remedial Action

1. Within 30 days after Settling Defendant Pneumo Abex concludes that the Remedial Action has been fully performed and the Performance Standards have been attained,

Settling Defendant Pneumo Abex shall provide written notice to the United States and shall schedule and conduct a final inspection to be attended by Settling Defendant Pneumo Abex and EPA. If, after the final inspection, Settling Defendant Pneumo Abex still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and Comment) within 30 days of the final inspection. In the report, a registered professional engineer ("RPE") and Duly Authorized Representative of Settling Defendant Pneumo Abex shall certify pursuant to Section XI.E that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a RPE and certified as required by Section XI.E. If, after completion of the final inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant Pneumo Abex in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Defendant Pneumo Abex to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and Comment). Settling Defendant Pneumo Abex shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution).

2. If EPA concludes, based on the initial or any subsequent written report by Settling Defendant Pneumo Abex, that the Remedial Action has been fully performed in accordance with

this Consent Decree and that the Performance Standards have been achieved, EPA will so notify Settling Defendant Pneumo Abex in writing of its concurrence (hereinafter "Concurrence Notice"). However, should the United States obtain information subsequent to the issuance of its Concurrence Notice not provided by Settling Defendant Pneumo Abex in its written report, and that information indicates that the Remedial Action has not been fully performed and/or that the Performance Standards have not been attained, the United States may revoke its Concurrence Notice and require Settling Defendant Pneumo Abex to complete the necessary work. Settling Defendant Pneumo Abex can re-submit a written report to the United States, in accordance with Section XV.A.1 above, after performance of the necessary work, seeking the United States' Concurrence Notice. Receipt by Settling Defendant Pneumo Abex of EPA's Concurrence Notice shall not affect Settling Defendant Pneumo Abex's obligations under this Consent Decree that continue beyond receipt of the Concurrence Notice, including, but not limited to, access, Operation and Maintenance, record retention, indemnification, insurance, payment of Future Response Costs and penalties, and any work to be conducted under Section VII (Additional Response Actions), Section VIII (U.S. EPA Periodic Review), Section XI (Reporting Requirements), Section XXV (Access to Information), and Section XXXI (Community Relations).

B. Completion of the Work

1. Within 30 days after Settling Defendant Pneumo Abex concludes that all phases of the Work (including O&M), with the exception of the payment of Future Response Costs associated with this Paragraph, have been fully performed, it shall provide written notice to the United States by submitting a written report by a RPE certifying that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall also contain the certification required by Section XI.E. If, after review of the written report, EPA

determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant Pneumo Abex in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Defendant Pneumo Abex to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth Review and Comment). Settling Defendant Pneumo Abex shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

2. If EPA concludes, based on the initial or any subsequent written report by Settling Defendant Pneumo Abex that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify Settling Defendant Pneumo Abex in writing of its concurrence (hereinafter 'Concurrence Notice No. 2'). However, should the United States obtain information subsequent to the issuance of its Concurrence Notice No. 2, not provided by Settling Defendant Pneumo Abex in its written report and that information indicates that the Work has not been completed in full satisfaction of the requirements of this Consent Decree, the United States may revoke its Concurrence Notice No. 2 and require Settling Defendant Pneumo Abex to complete the necessary work. Settling Defendant Pneumo Abex can re-submit a written report to the United States, in accordance with Section XV.B.1 above, after performance of the necessary work, seeking the United States Concurrence Notice No. 2.

XVI. EMERGENCY RESPONSE

A. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to the public health or welfare or the environment, Settling

Defendants shall, subject to Paragraph B of this Section XVI, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA Remedial Project Manager, or, if the EPA Remedial Project Manager is unavailable, the Chief, General Remedial Section, Superfund Remedial Branch. If neither of these persons is available, the Settling Defendants shall notify the EPA Region III Hotline at (215) 814-9016. Settling Defendants shall take such actions in consultation with the EPA Remedial Project Manager or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, or any other applicable plans or documents developed and approved pursuant to this Consent Decree. In the event that Settling Defendants fail to take sufficient response action as required by this Section, and EPA takes such action, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with NCP pursuant to Section XVII (Reimbursement of Response Costs).

B. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health, welfare and the environment or to prevent, abate, or minimize an actual or threatened release of Waster Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

A. Within 30 days of April 25, 1996, Settling Defendant Pneumo Abex shall:

1. Pay to the United States \$1,170,131.37, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, and referencing CERCLA Number 03Q8, DOJ Case Number 90-11-3-255A and the U.S. Attorney's Office file number 9504809 in reimbursement of Past Response Costs. Payment shall be made in accordance with instructions provided by the Plaintiff to Settling Defendant Pneumo Abex upon execution of the original consent decree in this matter. Any EFTs received at the U.S.

Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day.

B. Settling Defendant Pneumo Abex shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will periodically send Settling Defendant Pneumo Abex bills requiring payment that includes a cost summary setting forth direct and indirect costs incurred by EPA, DOJ and their contractors. The United States will also provide Settling Defendant Pneumo Abex with a printout of the Software Package for Unique Reports ("SPURS") pertaining to the said bills. Settling Defendant Pneumo Abex shall make all payments within 30 days of Settling Defendant Pneumo Abex's receipt of each bill requiring payment, except as otherwise provided in Paragraph C of this Section. Settling Defendant Pneumo Abex shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund", and referencing CERCLA Number 03Q8, and DOJ Case Number 90-11-3-255A in reimbursement of Future Response Costs. Settling Defendant Pneumo Abex shall forward the certified check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515 and shall simultaneously send copies of the check to the United States and the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

C. Settling Defendant Pneumo Abex may contest payment of any Future Response Costs under Paragraph B of this Section if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and

Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendant Pneumo Abex shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph B of this Section. Simultaneously, Settling Defendant Pneumo Abex shall establish an interest bearing escrow account in a bank duly chartered in the Commonwealth of Virginia and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendant Pneumo Abex shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, a bank statement showing the initial balance of the escrow account and a copy of the escrow agreement establishing the escrow account. Simultaneously with the establishment of the escrow account, Settling Defendant Pneumo Abex may initiate the dispute resolution procedures set forth in Section XX (Dispute Resolution). Failure to initiate the dispute resolution procedures set forth in Section XX within the 30 day period following receipt of the bill shall be a waiver of Settling Defendant Pneumo Abex's right to initiate dispute resolution with respect to that issue. If Settling Defendant Pneumo Abex fails to initiate the dispute resolution procedures set forth in Section XX within the 30 day period following receipt of the bill, then within five days of such 30th day, it shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States in the manner described in Paragraph B of this Section. If the United States prevails in the dispute then within five days of the resolution of the dispute, Settling Defendant Pneumo Abex shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph B of this Section. If Settling Defendant Pneumo Abex prevails

concerning any aspect of the contested costs, it shall direct the escrow holder to remit payment for that portion of the costs (plus associated accrued interest) for that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph A of this Section; Settling Defendant Pneumo Abex shall be disbursed the balance of the escrow account. The Dispute Resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant Pneumo Abex's obligation to reimburse the United States for its Future Response Costs.

D. In the event that the payments required by Paragraph A of this Section are not made within 30 days of April 25, 1996, or the payments required by Paragraph B of this Section within 30 days of the Settling Defendant Pneumo Abex's receipt of the bill, Settling Defendant Pneumo Abex shall pay interest on the unpaid balance at the rate established pursuant to Section 107 (a) of CERCLA, 42 U.S.C. § 9607 (a). The interest on Past Response Costs shall begin to accrue 30 days after April 25, 1996. The interest on Future Response Costs shall begin to accrue 30 days after Settling Defendant Pneumo Abex's receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Defendant Pneumo Abex's failure to make timely payments under this Section.

E. In addition to interest, a penalty charge of six percent will be assessed on any portion of the debt which remains delinquent more than 90 days after payment is due. However, should assessment of the penalty be required, it will be assessed from the first day payment is due as specified in Section XVII.A. Thus, to avoid the assessment of penalties, Settling Defendant Pneumo Abex must make the payment under Section XVII.A within 90 days of the date the payment is due. Penalty charge payments shall be made by certified check made

payable to "Treasurer, United States of America". Payments shall be mailed to U.S. EPA Region III, P.O. Box 360515, Pittsburgh, PA 15251-6515. Copies of checks(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions) and to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

XVIII. INDEMNIFICATION AND INSURANCE

A. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's designated representatives under Section 104 (e) of CERCLA, 42 U.S.C. § 9604 (e). Settling Defendant Pneumo Abex hereby indemnifies, saves and holds harmless the United States, and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's representatives under Section 104 (e) of CERCLA and any claim for just compensation arising out of performance of this Consent Decree. Further, Settling Defendant Pneumo Abex agrees to pay the United States all costs the United States incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling

Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

B. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant Pneumo Abex hereby indemnifies and holds harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

C. No later than 15 days before commencing any on-site Work, Settling Defendant Pneumo Abex shall secure and maintain or shall ensure that their Supervising Contractor, Contractors and Subcontractors secure and maintain until the first anniversary of EPA's certification of completion of the Remedial Action or issuance of the Concurrence Notice pursuant to Paragraph A.2 of Section XV (Final Inspection) comprehensive general liability insurance with limits of five million dollars, combined single limit, naming as additional insured the United States. No later than 15 days after April 25, 1996, Settling Defendant Pneumo Abex shall secure automobile liability insurance with limits of \$500,000 and shall maintain such insurance until the first anniversary of EPA's issuance of the Concurrence Notice pursuant to Paragraph A.2 of Section XV (Final Inspection). In addition, for the duration of this Consent Decree, Settling Defendant Pneumo Abex shall satisfy, and shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's

compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant Pneumo Abex shall provide to EPA certificates of comprehensive general liability and automobile insurance and a copy of each insurance policy. Settling Defendant Pneumo Abex shall resubmit such certificates and copies of policies each year on April 25. If Settling Defendant Pneumo Abex demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Settling Defendant Pneumo Abex need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Defendant Pneumo Abex may satisfy the provisions of this Paragraph C if it submits to EPA for approval one of the financial assurance mechanisms of Section XIV (Assurance of Ability to Complete Work) in at least the amounts stated in this Paragraph C demonstrating that it is able to pay any claims arising out of its performance of its obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIV (Assurance of Ability to Complete Work). If Settling Defendant Pneumo Abex seeks to utilize the mechanisms set forth in Section XIV (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph C, it must demonstrate an ability to pay the amounts required under this paragraph, above and beyond that required by the obligations of Section XIV (Assurance of Ability to Complete Work).

XIX. FORCE MAJEURE

A. "Force majeure", for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendant Pneumo Abex or of any entity controlled by Settling Defendant Pneumo Abex including, but not limited to, its contractors and

subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant Pneumo Abex's best efforts to fulfill the obligation. The requirement that Settling Defendant Pneumo Abex exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, failure to attain the Performance Standards, or increased costs.

B. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendant Pneumo Abex shall notify by telephone the EPA Remedial Project Manager or, in his or her absence, the Chief, General Remedial Section, Superfund Remedial Branch or, in the event both of EPA's designated representatives are unavailable, the EPA Region III Emergency Hotline at (215) 814-9016, within 48 hours of when Settling Defendant Pneumo Abex first knew or should have known that the event might cause a delay. Within five days thereafter, Settling Defendant Pneumo Abex shall provide in writing to EPA an explanation and description of the reasons for the delay; the obligations and deadlines Settling Defendant Pneumo Abex claims are affected by the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendant Pneumo Abex's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant Pneumo Abex, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendant Pneumo Abex shall include, with any notice, all available documentation

supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above notice requirements shall preclude Settling Defendant Pneumo Abex from asserting any claim of force majeure for that event. Settling Defendant Pneumo Abex shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or should have had notice.

C. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, for such time as is necessary to complete those obligations and EPA will notify Settling Defendant Pneumo Abex of the length of the extension. An extension of the time for performance of the obligation(s) affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendant Pneumo Abex in writing of its decision.

D. If Settling Defendant Pneumo Abex elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant Pneumo Abex shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant Pneumo Abex complied with the requirements of Paragraphs A and B, above. If Settling Defendant Pneumo Abex carries this burden, the delay at issue shall be deemed not to be a violation by

Settling Defendant Pneumo Abex of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

A. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

B. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty days from the time the dispute arises, unless it is modified by written agreement of the Parties to the Dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

C.1. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph D or E.

C.2. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any

factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph D or E.

C.3. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph D or E, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs D and E.

D. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the provisions of the Amended ROD (Appendix A) as modified by the ESDs (Appendix D).

1. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position including supporting documentation, submitted pursuant to this Paragraph and Paragraph C, above. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

2. The Director of the Hazardous Site Cleanup Division of EPA Region III will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph D.1 of this Section. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs D.3 and D.4 of this Section.

3. Any administrative decision by EPA pursuant to Paragraph D.2 of this Section shall be reviewable by this Court, provided that a notice of judicial appeal under this Section XX is filed by the Settling Defendants with the Court and served on all Parties within ten days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

4. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of EPA is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph D.1 and D.2 of this Section XX.

E. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

1. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph C of this Section, the Director of the Hazardous Site Cleanup Division of EPA Region III will issue a final decision resolving the dispute. The EPA's decision shall be binding on the Settling Defendants unless, within ten days of receipt of the decision, the Settling

Defendants file with the Court and serve on the Plaintiff a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

2. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law. In any such proceeding, the Settling Defendants shall bear the burden of coming forward with evidence and the burden of persuasion.

F. The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone, or affect in any way any obligation of the Settling Defendants under this Consent Decree, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute as provided in Paragraph H of Section XXI. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

A. Settling Defendant Pneumo Abex shall be liable for stipulated penalties in the amounts set forth in Paragraphs B and C of this Section to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendant Pneumo Abex shall include completion of the activities under this Consent Decree or any work plan or other plans approved under this Consent Decree identified below in accordance with all applicable requirements of law, this

Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

B. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Paragraph B.2, below, of this Section:

<u>1. Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$5,000	1st through 14th day
\$10,000	15th through 30th day
\$15,000	31st day and beyond

2. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendants), Section VII (Additional Response Actions), Section VIII (U.S. EPA Periodic Review), Section IX (Quality Assurance), Section XII (Submissions Requiring Agency Approval), and Section XVI (Emergency Response).

C. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Paragraph C.2, below, of this Section:

<u>1. Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

2. Failure to comply with the requirements of Section V (General Provisions), Section XI (Reporting Requirements), Section XIV (Assurance of Ability to Complete Work), and Section XV (Final Inspection).

D. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Separate penalties shall accrue for each separate violation of this Consent Decree.

E. Following EPA's determination that Settling Defendant Pneumo Abex has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant Pneumo Abex written notification of same and describe the noncompliance. However, penalties shall accrue as provided in the preceding Paragraph whether or not EPA has notified Settling Defendant Pneumo Abex of a violation. EPA may send Settling Defendant Pneumo Abex a written demand for the payment of the penalties.

F. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendant Pneumo Abex's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant Pneumo Abex invokes the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to United States Environmental Protection Agency, Region III Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515 and shall reference DOJ Case Number 90-11-3-255A. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions) and to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

G. Neither the invocation of dispute resolution procedures under Section XX (Dispute Resolution) nor the payment of penalties shall alter in any way Settling Defendant

Pneumo Abex's obligation to complete the performance of the Work required under this Consent Decree.

H. Penalties shall continue to accrue as provided in Paragraph D of this Section during any dispute resolution period, and shall be paid as follows:

1. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

2. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant Pneumo Abex shall pay all accrued penalties determined by the Court to be owed to the United States within 15 days of receipt of the Court's decision or order, except as provided in Subparagraph (3) below;

3. If the District Court's decision is appealed by any Party, Settling Defendant Pneumo Abex shall pay all accrued penalties determined by the District Court to be owed to the United States, into an interest-bearing escrow account established in accordance with the procedures set forth in Section XVII.C., within 15 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account, including interest and penalties, to EPA and/or Settling Defendant Pneumo Abex in accordance with the final appellate court decision.

I. If Settling Defendant Pneumo Abex fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties and interest and also the penalty charge as set forth in Section XVII.E. Settling Defendant Pneumo Abex shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period following its receipt from EPA of a demand for payment at the rate established pursuant to Section 107 (a) of

CERCLA, 42 U.S.C. § 9607 (a). Penalty charge payments shall be made payable to the "Treasurer, United States of America", and shall be mailed as set forth in Section XVII.E. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant Pneumo Abex's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122 (1) of CERCLA, 42 U.S.C. § 9622 (1).

J. No payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

A. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph B of this Section, the United States covenants not to sue or take administrative action against Settling Defendants pursuant to Section 106 and 107 (a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and Section 7003 of RCRA for performance of the Work, including the tasks identified in Section VI, and for recovery of Past Response Costs and Future Response Costs as narrowly defined in this Consent Decree. These covenants not to sue shall take effect upon the receipt by EPA of the payment required by Paragraph A of Section XVII (Reimbursement of Response Costs). These covenants not to sue with respect to each Settling Defendant are conditioned upon the complete and satisfactory performance of that Settling Defendant's obligations under this Consent Decree; however, this does not affect Settling Defendants' obligations under Section V.B. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

B. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph A of this Section. The United States reserves, and this Consent Decree is without prejudice to, all rights, (including, but not limited to, causes of action under Sections 106 and 107 (a) of CERCLA, 42 U.S.C. §§ 9606 and 9607 (a) against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) liability for response costs that have been or may be incurred by the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), and any other state or federal agency which is a trustee of natural resources and which have spent, or may in the future spend, funds relating to the Site;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

(7) liability for additional Operable Units.

C. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS

Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106 (b) (2), 111, 112, 113, 42 U.S.C. §§ 9606 (b) (2), 9611, 9612, 9613, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to Operable Unit 1, or any claims arising out of response activities at the Site. This Paragraph does not affect the Settling Defendants' rights pursuant to Section XX (Dispute Resolution). Moreover the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent action taken directly by the United States (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700 (d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

A. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes

of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

B. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, including the payment of past and future costs and performance of Operable Unit 1, the Parties hereto agree that the Settling Defendants are entitled, as of April 25, 1996, to such protection from contribution actions or claims as is provided by CERCLA Section 113 (f) (2), 42 U.S.C. § 9613 (f) (2).

C. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them after April 25, 1996 for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial. Settling Defendants acknowledge that the United States has no obligation to defend them in any suit or claim for contribution.

D. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant (s) shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however,

that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

A. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purpose of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

B. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104 (e) (7) of CERCLA, 42 U.S.C. § 9604 (e) (7), and 40 C.F.R. § 2.203 (b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104 (e) (7) of CERCLA or 40 C.F.R. Part 2, the public may be given access to such documents or information without further notice to Settling Defendants. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal courts in actions involving the United States. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following:

- (1) the title of the document, record, or information;
- (2) the date of the document, record, or information;
- (3) the name and title of the author of the document, record, or information;
- (4) the name and title of each addressee and recipient;
- (5) a description of the contents of the document, record, or information; and
- (6) the nature and basis of the privilege asserted by Settling Defendants. However,

no documents, records or information created, generated or collected pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

C. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVI. RETENTION OF RECORDS

A. Each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person, including any Settling Defendant, for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary, until ten years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Final Inspection). Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work until ten years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Final Inspection).

B. Upon conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records, documents or information, and, upon request of EPA Settling Defendants shall deliver all such documents, records and information to EPA. Settling Defendants may assert a claim of business confidentiality or attorney-client privilege or other privilege recognized by federal courts in actions involving the United States for certain documents and/or portions of documents or information and such claims shall be handled in accordance with the provisions of Section XXV (Access To Information). In no event shall Settling Defendants destroy such records or documents until EPA responds in writing approving such destruction.

C. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the filing of any earlier suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104 (e) and 122 (e) of CERCLA, 42 U.S.C. §§ 9604 (e) and 9622 (e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVII. NOTICES AND SUBMISSIONS

A. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals specified in the particular Section of this Consent Decree at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Bruce Gelber
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-3-255A

and

William Hutchins
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

and

Marcia P. Everett (3RC41)
Senior Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to EPA:

Hilary Thornton (3HW41)
EPA Remedial Project Manager
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to the Settling Defendants:

Settling Defendant Pneumo Abex's Project Coordinator selected pursuant to Section XIII.

XXVIII. EFFECTIVE DATE

The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein, and provided, however, that any obligations which went into effect upon entry of the original decree in this matter shall be deemed to have remained in effect since that time.

XXIX. RETENTION OF JURISDICTION

This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the Amended ROD.

“Appendix B” is the map of the Site.

“Appendix C” is the complete list of the Settling Defendants.

“Appendix D” consists of the ESDs.

XXXI. COMMUNITY RELATIONS

Settling Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

A. Schedules for completion of the Work specified in this Consent Decree or documents approved pursuant to this Consent Decree may be modified by agreement of the Parties. All such modifications shall be made in writing.

B. No modifications shall be made to provisions of this Consent Decree, without written notification to and written approval of the United States, Settling Defendants, and the Court.

C. Modifications to the Remedial Design Work Plan and the Remedial Action Work Plan that do not materially alter the requirements of those documents may be made by written agreement between EPA and Settling Defendant Pneumo Abex.

D. Nothing in this Section shall be deemed to alter the Court's power to enforce, supervise or modify this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122 (d) (2) of CERCLA, 42 U.S.C. § 9622 (d) (2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

B. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

A. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice of the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

B. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree.

C. Each Settling Defendant shall identify, on the attached signature page, the name and address of and agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure, including, but not limited to, waiver of service of a summons, and any applicable local rules of this Court.

SO ORDERED THIS _____ DAY OF _____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Pneumo Abex, Corp., et al.*, relating to the Abex Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 3.5.05

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice